

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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LARRY BRACEY,

Plaintiff,

FINAL PRETRIAL CONFERENCE  
ORDER

10-cv-287-bbc

v.

JAMES GRONDIN, C.O.  
HUNT, THOMAS TAYLOR  
and C.O. MURPHY

Defendants.  
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A final pretrial conference was held in this case on November 9, 2011 before United States District Judge Barbara B. Crabb. Plaintiff appeared by counsel, Mark Maciolek. Defendants appeared by Francis X. Sullivan and Robert B. Bresette.

Counsel predicted that the case would take 1 ½ - 2 days to try. They understand that trial days will begin at 9:00 and will run until 5:30, with at least an hour for lunch, a short break in the morning and another in the afternoon.

Counsel agreed to the voir dire questions in the form distributed to them at the conference. The jury will consist of seven jurors to be selected from a qualified panel of

thirteen. Each side will exercise three peremptory challenges against the panel. Before counsel give their opening statements, the court will give the jury introductory instructions on the way in which the trial will proceed and their responsibilities as jurors.

Counsel agreed that all witnesses would be sequestered.

Counsel should use the microphones at all times and address the bench with all objections. If they need to consult with one another, they should ask for permission to do so. Only the person questioning a particular witness may raise objections to questions put to the witness by the opposing party and argue the objection at any bench conference.

Counsel are to provide copies of documentary evidence to the court at the first day of trial.

Counsel discussed the form of the verdict and the instructions on liability. F i n a l decisions on the instructions and form of verdict will be made at the instruction conference once all the evidence on liability is in.

The following rulings were made on the parties' motions in limine.

Defendants' Motions - dkt. #113

1. Motion to allow defendants to introduce evidence of plaintiff's history of assaultive and threatening behavior toward staff members- dkt. #113(1)

DENIED as irrelevant to plaintiff's Eighth Amendment claim and unfairly prejudicial,

with two exceptions. Defendants may introduce evidence that they were aware of plaintiff's history of assaulting staff members and that it affected their assessment of the situation, if in fact they were aware of it. Only general evidence of plaintiff's disciplinary record and known assaultive and threatening behavior will be allowed; defendants should not try to introduce specific incidents or plaintiff's entire disciplinary record. They may also introduce evidence of the reasons for the policies requiring inmates to turn around and put their hands outside the trap when being handcuffed and requiring inmates to face forward when walking. It is fair for them to say that the policies exist because inmates have attacked officers through the traps and have spit on officers when not facing forward. Only if plaintiff attacks these reasons as false justifications may defendants introduce evidence that plaintiff has engaged in this type of behavior in the past.

2. Motion to allow defendants to introduce evidence of plaintiff's prior acts of threatening to kill staff members- dkt. #113(2)

DENIED as irrelevant and unfairly prejudicial.

3. Motion to allow defendants to introduce evidence regarding the security level at the Wisconsin Secure Program Facility and assaults committed by other inmates against correctional officers at the institution - dkt. #113(3)

GRANTED.

4. Motion to allow defendants to introduce evidence of plaintiff's conduct that led to

the search of his cell on July 29, 2005 - dkt. #113(4)

DENIED, except that defendants may introduce evidence that plaintiff's cell was being searched for evidence relevant to a conduct report *if* plaintiff argues that the search was intended as harassment. No other evidence about the search or the need for it will be allowed.

5. Motion to bar plaintiff from introducing evidence that defendant Eric Hunt was charged with violating Wis. Stat. § 940.29 - dkt. #113(5)

GRANTED. The evidence is irrelevant. The alleged incident occurred after July 29, 2005 and Hunt was acquitted.

B. Plaintiff's Motions - Dkt. #115

1. Motion to prohibit defendants from making a "golden rule" argument- dkt. #115(1). GRANTED as unopposed.

2. Motion to prohibit defendants from mentioning the possibility of the award of damages or attorney fees during the liability phase of the case - dkt. #115(2)

GRANTED in part, as to attorney fee award; DENIED as to defendants' use of the possibility of damages as a motive for plaintiff's suit.

3. Motion to exclude any witness not disclosed in defendants' Rule 26(a)(3) disclosure - dkt. #115(3)

GRANTED, although defendants may call Ellen Ray, named in their amended disclosure.

4. Motion to prohibit defendants from introducing evidence of their lack of disciplinary history, criminal history or other punishments - dkt. #115(4)

GRANTED.

5. Motion to prohibit defendants from introducing evidence of reasons why plaintiff is housed at the Secure Program Facility - dkt. #115(5)

GRANTED.

6. Motion to prohibit defendants from introducing the prior criminal records of any witness unless disclosed to plaintiff a reasonable time before trial and offered in accordance with Fed. R. Evid. 609 - dkt. #115(6)

DENIED.

7. Motion to prohibit defendants from introducing evidence of gang affiliation of any witness - dkt. #115(7)

GRANTED.

8. Motion to prohibit defendants from introducing evidence of reason plaintiff's cell was searched on July 29, 2005 - dkt. #115(8)

GRANTED. If, however, plaintiff testifies that defendants were harassing him with frequent searches, defendant can testify that they were searching for contraband in

connection with a conduct report.

9. Motion to prohibit defendants from introducing Rule 404(b) evidence not disclosed a reasonable time before trial - dkt. #115(9)

DENIED.

10. Motion to prohibit defendants from introducing expert testimony by defendants' witnesses not disclosed as required under Fed. R. Civ. P. 26(a)(2) - dkt. #115(10)

GRANTED as unopposed.

Plaintiff's motion for a finding of spoliation is DENIED.

Entered this 9th day of November, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge